

PUBERTY VS AGE: ON THE ISSUE OF A WARNING SIGN OF A VICTIM OF NON-VIOLENT INTERCOURSE WITH A MINOR

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The problem of proper sex education for minors¹ is extremely relevant nowadays. Today, children are beginning to be interested in topics of an intimate nature. Very often, they acquire twisted ideas about sexual relations and their meaning, and their parents are embarrassed to talk with them on these themes. In such situations, adolescents often begin to have an early sex life, which further leads to physical and psychological problems. Protecting children's health from possible harm as a result of this, as well as taking care of ensuring their normal development, the States set up legal prohibitions on sexual intercourse with minors, the violation of which leads to criminal liability.

In the vast majority of current criminal laws of the countries in the world, in particular, in Ukraine, Georgia and Russia, victims of non-violent sexual intercourse with minors are persons who have not reached the age of 16. At the same time, the Georgian legislation did not change its attitude regarding the age, which is the ground for determining the victim of this act – such an approach was used in the Criminal Code (of the Georgian SSR of 1960 (Article 119) [22] and remained in the Criminal Code of Georgia of 1999 (article 140). The latter provides for liability for sexual intercourse, sodomy, lesbianism, or other sexual contact in its perverse form with a person who is known to the perpetrator to be a person under 16 [21]. At the same time, the Ukrainian legislator changed its approach to this issue, and relatively recently. Until 2018 there was an enshrinement of such sign of the victim as reaching of puberty in the Criminal Code of the Ukrainian SSR of 1960 (article 120) and in the Criminal Code of Ukraine of 2001 (article 155) [9,7]. In 2018 the norm of article 155 was changed. The Law «On Amendments to the Criminal Code of Ukraine Concerning the Protection of Children from Sexual Abuse and Sexual Exploitation» of March 14, 2018 (hereinafter referred to as the Law of March 14, 2018) part 1 of the specified article was as follows: «Natural or unnatural sexual intercourse with a person under 16, committed by an adult, shall be punished by...» [15]. Thus, compared to the previous version of this norm, a clarification as to the types of sexual intercourse (natural or unnatural) was added, and the reference to the non-attainment of puberty was changed to the failure to reach the age of 16.

For its part, the criminal legislation of the Russian Federation is more variable in terms of regulating the specified victim's sign, since article 119 of the Criminal Code of the RSFSR of 1960 up to 1997, the sign of non-achievement of maturity was fixed, and the rule of article 134 of the Criminal Code of 1996 was changed four times – the sign of the victim at various times changed in that order: the person's failure to reach 16 years (in the original edition), 14 years (in 1998), 16 years (in 2003), 16 years and puberty (in 2012), 16 years (in the current edition since 2014). The latest version of this provision provides for liability for sexual intercourse with a person under 16, committed by a person who has reached the age of 18 (part 1); sodomy or lesbianism with a person under

the age of 16, committed by a person who has reached the age of 18 (part 2) [5,23].

In our opinion, the issue of the sign of the victim, which determines the existence of such crime as non-violent sexual intercourse with a minor, remains controversial and relevant today. The purpose of this article is to identify the most optimal sign of a victim of non-violent sexual intercourse with a minor based on the analysis of approaches to the definition of such a sign in the criminal legislation of different countries, as well as the doctrinal provisions of medicine and jurisprudence.

Material and methods. In the course of the study such methods of scientific knowledge were used: the dialectical approach – in the study of changes in approaches to the determination of the sign of the victim of non-violent sexual intercourse with a minor under the criminal legislation of some countries; comparative legal method – when comparing approaches to the definition of the victim's sign in the Criminal Code of foreign countries; general logical methods (analysis, synthesis, induction, deduction, generalization) – when identifying the advantages and disadvantages of doctrinal and legislative approaches to determining the sign of the victim of non-violent sexual intercourse with a minor; dogmatic method – when defining the concept of «puberty».

Results and their discussion. The study of criminal legislation of a number of foreign countries and the proposals expressed in science allowed us to identify the main approaches to the definition of the sign of the victim, the presence of which should have criminal law significance for qualifying the act as non-violent sexual intercourse with a minor. Among such approaches are: 1) *the age approach, according to which the victim is recognized as a person who has not reached a certain age*; 2) *the medical-physiological approach that provides for the failure of the victims to reach puberty*; 3) *the mixed approach: a) cumulative, involving the person's failure to reach puberty and a certain age; b) alternative, providing for the person's failure to reach sexual maturity or a certain age.*

Let's consider the specified approaches in turn.

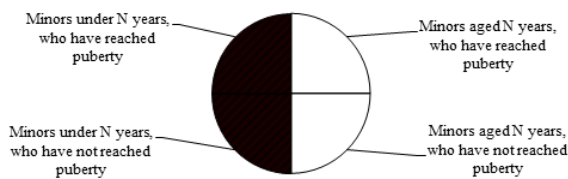
1) *The age approach, according to which a person, who failed to reach a certain age, is recognized as a victim* (Fig. 1).

In the legislation of foreign countries, the age limit of sexual consent is set mainly from 16 (Algeria, Great Britain, Israel, India, Norway, Finland, Switzerland, South Africa, Jamaica, etc.), 15 (Guinea, Denmark, Costa Rica, Poland, Romania, France, Tanzania, Czech Republic, Sweden, Ethiopia, etc.) or 14 years (Austria, Hungary, Germany, Italy, Paraguay, Peru, Portugal, Serbia, Togo, Croatia, Estonia, etc.); in some countries, from the age of 18 (the Dominican Republic, Egypt, Iraq, Malta, Turkey, Uganda, etc.), in rare cases there is a different age. The age of sexual consent can vary even within one State, for example, in different states of the United States it ranges from 16 to 18 years. Regarding the countries of the former Soviet Union, most of them set the age of sexual consent is 16 [5]. Interestingly, the Russian legislator has repeatedly changed this age threshold, ranging it between 16 and 14 years.

¹ Note. Hereinafter, the concept of "minor" will cover both boys and girls.

Criminal-legal protection of minors against non-violent sexual intercourse.

The age approach (criterion of non-attainment of N years)



¹ Note: in Figs. 1, 2, 3 and 4, the shaded area reflects a group of minors, who are subject to criminal-legal protection against non-violent sexual intercourse, based on the use of age, medical and physiological or mixed approaches, respectively

Fig. 1. Criminal-legal protection of minors against non-violent sexual intercourse. The age approach (criterion of non-attainment of N years)

With regard to the subjective attitude of the perpetrator to the age of the victim, the Plenum of the Supreme Court of the Russian Federation clarified that, «applying the law on criminal liability for crimes under Articles 131-135 of the Criminal Code of the Russian Federation, in relation to minors, the courts should proceed from the fact that the qualification of the crimes featured is possible only in cases where the perpetrator knew or admitted that the victim is a person under the age of 18 or of other age specifically mentioned in the disposition of the article in the Special Part of the Criminal Code» [11].

Among the positive aspects of this approach, it should be noted that the establishment of the minimum age of sexual maturity eliminates the need for mandatory forensic examination to determine the sexual maturity of the victim², which greatly simplifies the process of qualifying and proving this crime, simplifies and reduces the cost for criminal proceedings. Similarly, this approach reduces the probability of objective incrimination (bringing a person to criminal responsibility without establishing his (her) guilt) as the person does not need to realize that the victim has not reached puberty [15]. Besides, the statutory determination of age provides a greater degree of legal certainty compared to other approaches, as well as the decrease in the discretion of law enforcement, minimization of errors and corruption risks.

The arguments for justification of the age approach are also those, that the certain age gives reason to assume that a person has attained not only puberty, but also a certain level of social, psychological, spiritual and moral development of the personality, which is significant for the beginning of sexual life. It is no coincidence that, with the reaching of certain age, the law usually connects the emergence of a person's legal capacity, the ability to vote, to marry, to enter into employment, and to bear legal responsibility for his (her) actions. Furthermore, at a certain age, young people receive an appropriate level of education (in most countries – secondary education), which allows them to more address the issue of sexual relations more consciously and responsibly and to avoid many of the risks connected with them.

At the same time, considering the indicated approach, one should take into account the fact that such types of age as biological (anatomical and physiological) and chronological (passport or calendar) are distinguished in medicine. The first type characterizes the biological state of the organism, and the sec-

ond is determined by the period from birth to the moment of its calculation [3]. Since the biological and calendar age of an individual can differ significantly from each other, the legislator, operating only by the calendar age category, can ignore in some cases the actual physiological state of a particular person. In the situation under consideration, the most significant aspect of a person's biological age is the reaching of sexual maturity, which may or may not correspond to the calendar age of the victim, defined by the legislator. In case of non-compliance between them, the age criterion becomes formal and does not correspond to objective reality.

On this basis, opponents to this approach point out that it is precisely the consideration of the sign of sexual maturity that prevents harm to the health of the minor. Fixing in the Criminal Code, for example, the 16-year-age of the victim may cause negative consequences in case of voluntary sexual intercourse with a girl who is 16 years old, but who by her physiological characteristics did not reach sexual maturity [2]. Thus, individuals, who have reached a certain age, but have not reached puberty, are deprived of criminal-legal protection.

On the other hand, persons who have reached maturity but have not reached a certain age are limited in their ability to have sex, since their intercourse with adults would be criminally punishable for the latter. This can be regarded as a certain manifestation of sexual discrimination based on the age.

Moreover, it should be noted that according to the medical scientific literature, puberty comes at the age of 15–16 in the case of girls and at the age of 17–18 on the case of boys. The time frame for its emergence depends on many factors – hereditary characteristics, domestic, socio-economic, climatic conditions, health, nutrition, etc., [12]. This raised the issue of the validity of choosing of the certain age, since which sexual maturity is presumed. It seems that since the basis for establishing criminal responsibility for sexual intercourse with minors is the concern for the physiological health of children, it is necessary to take into account how sexual maturity of a person and reaching of certain age are correlated. Therefore, when determining the age of consent, it is necessary to proceed from the study of the average indicators of puberty, which most likely indicate that by reaching a certain age all or the overwhelming majority of members of this group will become sexually mature.

Obviously, the legislator should choose this age focusing not only on the average age, which is indicator for sexual maturity among the population of a particular country, but deliberately overestimating it, setting this age bar «with a margin». Besides, there is the problem of appropriateness of fixing a single age threshold for girls and boys, which, due to the different rates of their sexual development, should be differentiated. Consequently, the most general character of the solution of the issue of the age of sexual consent, manifested by this approach, does not take into account a number of individual characteristics of reaching sexual maturity both among individuals and entire groups of the population.

2) Medical and physiological approach, which provides for the failure of the victims to reach sexual maturity (Fig. 2).

It should be noted that until 2018 Ukraine remained the only State in the post-Soviet area and in Europe, the Criminal Code of which provided for responsibility for non-violent sexual intercourse with a minor based on this approach [5,6].

²Note. More information about performing forensic examination concerning establishment sexual maturity of the victim will be given when characterizing the medical and physiological approach

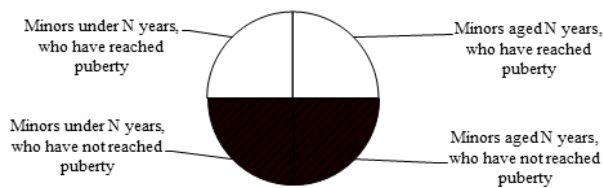


Fig. 2. Criminal-legal protection of minors against non-violent sexual intercourse. Medical and physiological approach (criterion of non-attainment of puberty)

According to article 155 of the Criminal Code of Ukraine before amendments made by the Law of March 14, 2018, criminal liability was incurred for sexual intercourse with a person, who has not reached puberty. At the same time, the Plenum of the Supreme Court of Ukraine in its Resolution no. 5 of May 30, 2008, «On Judicial Practice in Cases of Crimes against Sexual Freedom and Sexual Immunity of the Person» determined that puberty is a physiological condition of the human body that is characterized by the ability to full implementation of sexual functions [16]. At the same time, according to the Rules for conducting forensic medical examinations (surveys) over sexual conditions in the forensic medical examination bureau, approved by the order of the Ministry of Health of Ukraine of January 17, 1995 (hereinafter referred to as the Rules), the concept of puberty is differentiated with regards to females and males. In case of the first, under the state of puberty should be understood the formation of the female body, when sex, fertilization, pregnancy, childbirth and feeding of the child are normal functions and do not lead to health disorder (Section 2.1.1). In case of males puberty is characterized by the state of general physical development and the formation of the gonads, whereby sex life is a physiologically normal function, which does not cause any health problems and does not harm the further development of the body (paragraph 2.13.1) [14].

To qualify the actions of a person pursuant to article 155 of the Criminal Code of Ukraine in the previous edition of this norm the mental attitude of the perpetrator towards the state of the victim was taken into account. The Plenum of the Supreme Court of Ukraine notes in paragraph 16 of the aforementioned resolution that voluntary sexual intercourse with a person who has not reached sexual maturity, constitutes the crime under article 155 of the Criminal Code, in case the perpetrator realized (reliably knew or assumed) that the victim did not reach puberty, as well as in cases he should and could have realized this.

At the same time, the appropriateness of enshrining the sign of minor's failure to achieve puberty has aroused heated discussion. Among the advantages of this approach, it should be noted that it contributes more to ensuring the normal sexual development of minors and their health. It is based on the physiological criterion that has a clear medical basis, and therefore is the most objective.

From a physiological point of view, sexual intercourse causes actual harm precisely to a person, who has not reached puberty, regardless of other factors, such as age. Therefore, in early sexual relations the girl's body is not yet fully formed, so susceptibility to various infections and viruses increases (more than forty of infections and more than hundred viruses are known). No less dangerous these infections are for men, because, remaining untreated, they become chronic and cause infertility, the level of which currently stands at 40-50%. At the same time, the risks of certain venereal and infectious diseases, which are sexually

transmitted increase by several times for minors. Another important argument against early sexual debut is the possibility of pregnancy. Early pregnancy, both full-term and interrupted, has a negative impact on girl's health [17, 18]. Health hazards are also non-vaginal sex, through which various viruses, infections, and sexually transmitted diseases can be transmitted. Although the use of condoms during sexual intercourse significantly reduces the risk of infection, nevertheless, experts note that this does not guarantee full protection, since a virus infection can occur when in contact with unprotected skin areas [20]. Reaching puberty significantly reduces the level of some of these risks.

Considering the fact that sexual development is manifested differently not only in different sexual, social, national groups, but also in individuals, this criterion can be considered the most individual. However, this advantage causes some problems. Thus, disadvantages of this approach include the fact that determination of the fact that the victim did not reach sexual maturity often requires special knowledge, and in certain cases, it is impossible without carrying out an appropriate examination [15]. For example, in accordance with article 242, paragraph 5 of the Criminal Procedural Code of Ukraine, the examination is mandatory for establishment sexual maturity of a person in criminal proceedings for crimes involving sexual intercourse with a person who has not reached sexual maturity. Based on the conclusion of the relevant forensic examination, the issue of the victim's puberty was being addressed. At the same time, according to the Rules, the establishment of sexual maturity is carried out in respect of persons aged from 14 to 18 (paragraphs 2.1.2., 2.13.1.). Consequently, at the age of 14, the absence of puberty was presumed. In other cases, conducting a forensic examination on puberty was a necessary stage in the investigation of the relevant crimes [19].

It should be noted that the need for a forensic examination on puberty, which should be carried out by an expert organization, expert or experts, on behalf of the investigating judge or court, provided at the request of the criminal proceedings (article 242, part 1 of the Criminal Procedure Code of Ukraine), is considered to be among the factors that complicate the criminal proceedings and lead to its delay and increasing cost. Besides, this model increases the risks of objective incrimination of non-violent sexual intercourse with a person who has not reached sexual maturity, which is unacceptable in criminal law and violates the presumption of innocence.

Furthermore, the statutory determination of puberty as the sign of the victim of this type of crime causes the problem of qualifying non-violent non-vaginal sexual intercourse with a minor of whether such intercourse harms puberty of the person [6,8].

3) *The mixed approach. There are two directions within its framework.*

According to the first direction (let's call it *cumulative*), it is proposed to use as the sign of a victim of non-violent sexual intercourse the person's failure to reach a certain age (hereinafter we will also denote it as N years) and puberty.

It should be once more pointed out that such an approach was enshrined for some time in the Criminal Code of the Russian Federation of 1996. In article 134 of this Code in 2012 – 2013 the responsibility for sexual intercourse with a person under 16 who has not reached sexual maturity was assigned; the perpetrator could be a person at the age of 18 [23]. At the same time, as the scientists note, such a formulation, firstly, returned the sign «achievement of puberty», the establishment of which caused considerable difficulties for forensic experts, as well as during

the investigation and consideration of the case by the court; secondly, it essentially decriminalized non-violent sexual intercourse with a person who has reached puberty but has not reached the age of 16 [4]. Some scientists assume that a technical error was made in the Criminal Code of the Russian Federation, which manifested itself in the use of the conjunction «and» instead of the conjunction «or» [24].

Thus, according to this approach, only minors up to N years who have not reached puberty are under criminal-legal protection. Accordingly, the criminal liability of a person who has voluntary sexual intercourse with a minor is excluded if: 1) the minor has reached both sexual maturity and N years; 2) the minor has reached sexual maturity, but has not yet reached N years; 3) the minor has reached N years, but has not reach puberty (Fig. 3).

Based on Fig. 3, the scope of criminal-legal protection of the sexual development of juveniles is narrowed compared with previous approaches. Nevertheless, the advantages of this approach are that the issue of objective incrimination is partially resolved (it is not necessary to establish that a person has reached sexual maturity in cases where he (she) has reached N years), and sexual freedom of persons who have reached sexual maturity is guaranteed, regardless of their age.

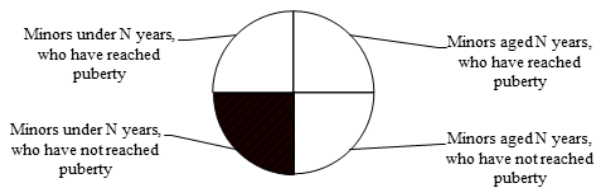


Fig. 3. Criminal-legal protection of minors against non-violent sexual intercourse. Mixed cumulative approach (a minor has not reached N years and puberty)

In accordance with another direction of the mixed approach (let us call it *alternative*), the sign of a victim of non-violent sexual intercourse is that a person has not reached a certain age or sexual maturity. Such an approach can be observed in the Criminal Code of Albania, according to which intercourse with a minor, who has not reached the age of 13 or has not reached sexual maturity (art. 100) [5] is qualified as punishable. A similar judgment with the proposal for amending the Criminal Code was expressed in the Ukrainian criminal law doctrine (indicating that a person has not reached 16 or sexual maturity) [1].

Based on the interpretation of this approach, the following groups of persons are protected by criminal law: 1) minors who have not reached both sexual maturity and N years; 2) minors who have reached sexual maturity, but who have not reached N years; 3) minors who have not reached puberty, but who have reached N years (Fig. 4). Persons who have had voluntary sexual intercourse with these victims are prosecuted.

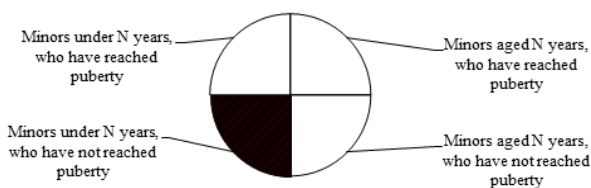


Fig. 4. Criminal-legal protection of minors against non-violent sexual intercourse. Mixed alternative approach (a minor has not reached N years or puberty)

Due to its combined nature, this approach, based on Figure 4, significantly expands the criminal-legal protection of sexual development of minors; however, it retains all the problems inherent in previous approaches. In particular, the problem of objective incrimination is not solved within this approach. Besides, it involves forensic examination concerning sexual maturity of the victim even after he (she) has reached the age of N years.

Conclusions. Thus, the research made it possible to establish that there is no universal approach to the determination of the most optimal sign of a victim of non-violent sexual intercourse with a minor, since all the considered approaches have both advantages and disadvantages.

Medico-physiological approach, in which the criterion of non-attainment of puberty is laid down, takes into account the interests of minors, implies an individual approach to each specific situation, but leaves open the problem of objective incrimination. The age approach, despite the fact of dominating in most states and being the most general and formal, does not take into consideration individual sexual development, as well as the characteristics of the sexual development of boys and girls. The mixed cumulative approach (the approach according to which a minor has not reached N years and puberty) narrows the criminal-legal protection of sexual development of minors, but partially eliminates the possibility of objective incrimination and expands the sphere of sexual freedom of persons who have reached puberty. In turn, the mixed alternative approach (the approach according to which a minor has not reached N years or puberty), while expanding the criminal-legal protection of sexual development of minors, does not solve the problem of objective incrimination and complicates criminal proceedings in this category of cases because of the need for forensic examinations concerning the establishment of sexual maturity of persons who have reached a certain age.

It seems that the legislator of each State should independently determine which approach to use, which age of sexual consent to establish, taking into account the peculiarities of the mentality, traditions, culture, priorities of criminal-legal protection. In doing so, when choosing the age or one of the mixed approaches, in our view, it would be advisable to raise the issue of differentiating the age of sexual consent of young men and women.

REFERENCES

1. Бандурка І. О. Захист дитинства в Україні: кримінально-правові та кримінологічні засади : монографія; за наук. ред. О. М. Литвинова. Харків: Золота миля; 2017: с. 362.
2. Висновок Головного експертного управління на проєкт Закону України «Про внесення змін до Кримінального кодексу України щодо захисту дітей від насильства та сексуальної експлуатації» від 14.03.2018, № 2334-VIII // <http://w1.c1.rada.gov.ua/pls>
3. Возраст. Большая медицинская энциклопедия // <https://xn--90aw5c.xn--c1avg/index.php>
4. Дьяченко А. П., Цымбал А. И. Уголовно-правовая охрана детей от сексуальных посягательств: опыт России и зарубежных стран. Lex russica. 2014. № 11. Т. ХСVI. С. 1304-1315.
5. Капинус О.С., Додонов В.Н. Незаконное половое сношение и иные действия сексуального характера с несовершеннолетними // Современное уголовное право в России и за рубежом: некоторые проблемы ответственности: Сборник статей. М.: Буквевед, 2008. С. 197-212 // <http://www.durex-promo.ru/index>.
6. Кримінальне право. Особлива частина: підручник: у 2-х т. / за ред. : О. О. Дудоров, Є. О. Письменський. Луганськ : Елтон – 2; 2012. Т. 1: с. 210.

7. Кримінальний кодекс України від 05.04.2001 р., № 2341-III // <http://zakon1.rada.gov.ua/laws/show/2341-14/print1390917408963798>.
8. Кримінальний кодекс України. Науково-практичний коментар : у 2 т. / Нац. акад. прав. наук України, Нац. ун-т «Юрид. акад. України ім. Ярослава Мудрого» ; за заг. ред. В. Я. Тація та ін. 5-те вид., допов. Харків: Право; 2013. Т. 2 : Особлива частина: с. 136.
9. Кримінальний кодекс Української Радянської Соціалістичної Республіки від 28.12.1960 р., № 2001-05 // http://search.ligazakon.ua/l_doc2.nsf/link1/KD0006.html.
10. Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI // <https://zakon.rada.gov.ua/laws/show/4651-17/print>.
11. О судебной практике по делам о преступлениях против половой неприкосновенности и половой свободы личности: постановление Пленума Верховного Суда Российской Федерации от 04.12.2014 г., № 16 // Российская газета. 2014. № 284.
12. Половая зрелость. Медицинская энциклопедия // <http://www.medpulse.ru/encyclopedia/437.html>.
13. Пояснювальна записка до проекту Закону України «Про внесення змін до Кримінального кодексу України щодо захисту дітей від насильства та сексуальної експлуатації» від 14.03.2018 р., № 2334-VIII // http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53813.
14. Правила проведення судово-медичних експертиз (обстежень) з приводу статевих станів в бюро судово-медичної експертизи: наказ Міністерства охорони здоров'я України від 17.01.1995 р., № 6 // <http://zakon3.rada.gov.ua/laws/show/z0253->
15. Про внесення змін до Кримінального кодексу України щодо захисту дітей від сексуальних зловживань та сексуальної експлуатації: Закон України від 14.03.2018 р., № 2334-VIII // <http://zakon5.rada.gov.ua/laws/show/2334-19>.
16. Про судову практику у справах про злочини проти статевої свободи та статевої недоторканості особи: постановою Пленуму Верховного Суда України від 30.05.2008 р., № 5 // <http://zakon2.rada.gov.ua/laws/show/v0005700-08>.
17. Ранне статево життя угрожает раком шейки матки. Відомості. Матеріал від 14.03.2013 р. // <https://vidomosti-ua.com/health/62863>.
18. Самый оптимальный возраст первого сексуального опыта [Электронный ресурс] // У доктора. Все о женском здоровье // <http://udoktora.net/kakov-optimalnyiy-vozzrast-pervogo-seksualnogo-opyita-3528/>.
19. Скок О. С. Призначення експертиз у кримінальному провадженні з розслідування злочинів проти статевої свободи та статевої недоторканності особи. Порівняльно-аналітичне право. 2018. № 1. С. 334-336.
20. Тагліна О. В. Основи здоров'я. Київ: Ранок, 2017. 160 с. // <https://mozok.click/421-pdruchnik-osnovi-zdorovya-9-klas-taglna-o-v-chitati-onlayn.html>.
21. Уголовный кодекс Грузии от 22.07.1999 г., № 2287-вс // <https://www.matsne.gov.ge/ka/document/download/16426/173/ru/pdf>
22. Уголовный кодекс Грузинской советской социалистической республики на груз. и рус. языках. Тбилиси: Сабчота Сакартвело, 1977. 371 с. С. 275.
23. Уголовный кодекс Российской Федерации от 13.06.1996 г., № 63-ФЗ // <http://ivo.garant.ru/#/document/10108000/paragraph/24953219:26>.
24. Якубов А.Е. Lapsus linguae? Законность. 2013. № 3. С. 34 – 35.

SUMMARY

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The purpose of the study was to identify the most optimal sign of a victim of non-violent sexual intercourse with a minor based on the analysis of approaches to the definition of such a sign in the criminal legislation of different countries, as well as the doctrinal provisions of medicine and jurisprudence.

In the process of research, such methods of scientific knowledge were used as: a dialectical approach, a comparative law method, general logical methods (analysis, synthesis, induction, deduction, generalization), as well as a dogmatic method.

The study of criminal legislation of a number of foreign countries and proposals expressed in criminal law science allowed to identify the main approaches to the definition of the sign of a victim, the presence or absence of which should have criminal law significance for qualifying the act as non-violent sexual intercourse with a minor. Such approaches are: 1) the age approach, according to which a person who has not attained a certain age is recognized as a victim; 2) the medical-physiological approach, which involves reaching a victim of puberty; 3) the mixed approaches: a) cumulative, providing for a person to reach puberty and a certain age; b) alternative, providing for a person to reach puberty or a certain age.

The advantages and disadvantages of each approach are analyzed. It was concluded that there is no universal approach to determining the most optimal sign of a victim of non-violent sexual intercourse with a minor, since all the considered approaches have both advantages and disadvantages. A legislator in each particular state should independently determine which approach to use, the age of sexual consent to establish, taking into account the peculiarities of the mentality, traditions, culture, priorities of criminal law protection. Moreover, when choosing an age or one of the mixed approaches, it would be advisable to raise the issue of differentiating the age of sexual consent of boys and girls.

Keywords: minor, puberty, age of sexual consent, nonviolent sexual intercourse with a minor.

РЕЗЮМЕ

ПОЛОВАЯ ЗРЕЛОСТЬ VS ВОЗРАСТ: К ПРОБЛЕМЕ ПРИЗНАКА ПОТЕРПЕВШЕГО ОТ НЕНАСИЛЬСТВЕННОГО ПОЛОВОГО СНОШЕНИЯ С НЕСОВЕРШЕННОЛЕТНИМ

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Целью исследования явилось выявление наиболее оптимального признака потерпевшего от ненасильственного

полового сношения с несовершеннолетним на основании анализа подходов к определению такого признака в уголовном законодательстве разных стран, а также доктринальных положений медицины и юриспруденции.

В процессе исследования использованы такие методы научного познания, как диалектический подход, сравнительно-правовой метод, общелогические методы (анализ, синтез, индукция, дедукция, обобщение), а также догматический метод.

Изучение уголовного законодательства ряда зарубежных государств и предложений, высказываемых в науке уголовного права, позволило выделить основные подходы к определению признака потерпевшего, наличие или отсутствие которого должно иметь уголовно-правовое значение для квалификации деяния как ненасильственные половые сношения с несовершеннолетним. Такими подходами являются: 1) возрастной подход, согласно которому потерпевшим признается лицо, не достигшее определенного возраста; 2) медико-физиологический подход, предусматривающий не-

достижение потерпевшим половой зрелости; 3) смешанный подход: а) кумулятивный, предусматривающий достижение лицом состояния половой зрелости и определенного возраста; б) альтернативный, предусматривающий достижение лицом состояния половой зрелости или определенного возраста.

Проанализированы преимущества и недостатки каждого из подходов. Сделан вывод о том, что универсального подхода к определению наиболее оптимального признака потерпевшего от ненасильственного полового сношения с несовершеннолетним не существует, поскольку все рассмотренные подходы имеют как преимущества, так и недостатки. Законодатель в каждом конкретном государстве должен самостоятельно определить, какой подход ему использовать, какой возраст половой согласия устанавливать с учетом особенностей менталитета, традиций, культуры, приоритетов уголовно-правовой охраны. При этом при выборе возрастного либо одного из смешанного подходов целесообразно ставить вопрос о дифференциации возраста половой согласия юношей и девушек.

რეზიუმე

სქესობრივი მოწიფულობა vs ასაკი: არასრულწლოვანთან არაძალადობრივი
სქესობრივი კავშირიდან დაზარალებულის ნიშნის პრობლემისადმი

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ეროვნული აკადემიის დანაშაულებრიობის შესწავლის სამეცნიერო-კვლევითი ინსტიტუტი;
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კვლევის მიზანს წარმოადგენდა არასრულწლოვანთან არაძალადობრივი სქესობრივი კავშირიდან დაზარალებულის ყველაზე ოპტიმალური ნიშნის გამოვლენა სხვადასხვა ქვეყნების სისხლის სამართლის კანონმდებლობაში აღნიშნული ნიშნის განსაზღვრის ანალიზის, მედიცინის და იურისპრუდენციის დოქტრინული დებულებების საფუძვლებზე.

კვლევის პროცესში გამოყენებულია სამეცნიერო შემეცნების ისეთი მეთოდები, როგორცაა დიალექტიკური მიდგომა, შედარებით-სამართლებრივი მეთოდი, საერთოლოგიკური მეთოდები (ანალიზი, სინთეზი, ინდუქცია, დედუქცია, განზოგადება) და აგრეთვე დოგმატიკური მეთოდი.

სახვარგარეთის რიგი ქვეყნების სისხლის სამართლის კანონმდებლობის და სისხლის სამართლის მეცნიერებით შემოტანილი წინადადებების შესწავლამ საშუალება მოგვცა გამოგვეჩინა ძირითადი მისაღვომები დაზარალებულის ნიშნის გამოვლენისთვის, რომლის არსებობას ან არარსებობას უნდა ქონდეს სისხლის სამართლებრივი მნიშვნელობა ქმედობის არასრულწლოვანთან არაძალადობრივი სქესობრივი კავშირის კვალიფიკაციის მიცემისთვის. ასეთი მიდგომებია: 1) ასაკობრივი მიდგომა, რომლის თანახმად დაზარალებულად აღიარებენ პირს, რომელსაც არ მიუღწევია განსაზღვრულ ასაკამდე; 2) სამედიცინო –

ფიზიოლოგიური მიდგომა, რომელიც ითვალისწინებს, რომ დაზარალებულს არ მიუღწევია სქესობრივ მოწიფულობამდე; 3) შერეული მიდგომა: ა) კუმულაციური, რომელიც ითვალისწინებს, რომ პირმა მიაღწია სქესობრივ მოწიფულობას და განსაზღვრულ ასაკს; ბ) ალტერნატიული, რომელიც ითვალისწინებს, რომ პირმა მიაღწია სქესობრივ მოწიფულობას ან განსაზღვრულ ასაკს.

ჩატარებულია ყოველი მიდგომის უპირატესობების და ნაკლოვანებების ანალიზი. გამოტანილია დასკვნა, რომ არ არსებობს უნივერსალური მიდგომა არასრულწლოვანთან არაძალადობრივი სქესობრივი კავშირიდან დაზარალებულის ყველაზე ოპტიმალური ნიშნის განსაზღვრისთვის, ვინაიდან ყველა განხილულ მიდგომას გააჩნია როგორც უპირატესობა, ასევე ნაკლოვანობა. კანონმდებელმა ყოველ კონკრეტულ სახელმწიფოში დამოუკიდებლად უნდა განსაზღვროს თუ როგორი მიდგომა გამოიყენოს, სქესობრივი კავშირის რომელი ასაკი დაადგინოს მენტალიტეტის, ტრადიციების, კულტურის, სისხლის სამართლის დაცვის პრიორიტეტების ჩათვლით. ამასთან ერთად, ასაკობრივი ან ერთ-ერთი შერეული მიდგომის არჩევასას მიზანშეწონილი იქნება საკითხის დასმა ემპირიკების და ქალიშვილების სქესობრივი თანხმობის ასაკის დიფერენციაციის შესახებ.

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